

1 James Alan Bush
2 1745 De Marietta Avenue #3
3 San Jose, CA 95126
4 (408) 982-3272

5 Plaintiff in pro per
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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

13 James Alan Bush,) Case No.: C 08-00539 (RS) JF
14 Plaintiff,)
15 v.) PETITION FOR WRIT OF MANDAMUS
16 United States Attorney General,)
17 Department of Justice, Federal)
18 Bureau of Investigation, and)
19 DOE AGENT ONE to DOE AGENT TEN,)
20 inclusive,)
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22 Defendants.)
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1 [Thomas v. County of Los Angeles, 978 F.2d 504, 508-509 (9th Cir.
 2 1993)]; and,

3 • The Supreme Court has repeatedly upheld the appropriateness of
 4 federal injunctive relief to combat a 'pattern' of illicit law
 5 enforcement behavior [Pennsylvania v. Porter, 659 F.2d 306 (3rd Cir.
 6 1981)].

7 9. On multiple occasions between June 2006 and January 2008, petitioner
 8 made prior demands on the aforementioned respondents to perform
 9 their duty, which were made in writing and in persona, to the FBI
 10 Field Divisions in San Francisco (at 450 Golden Gate Avenue, 13th
 11 Floor) and Campbell (1919 South Bascom Avenue, 4th Floor), ~~by either~~ *Hand*
 12 ~~calling or visiting in-person;~~ and, on January 10th, 2008, petitioner
 13 sent a letter to the Civil Rights Division of the Department of
 14 Justice, which provided an overview of his complaint. On March 6th,
 15 2007, the Department of Justice replied by letter, claiming that the
 16 Special Litigation Division was the improper venue to submit his
 17 complaint. A copy of the letter is attached hereto as Exhibit "A"
 18 and made a part hereof.

19 10. Respondents refused to hear petitioner's allegations of deprivation
 20 of certain rights and protections guaranteed to him by the Fourth
 21 and Fourteenth Amendments of the United States Constitution
 22 and the laws of the United States, which is cognizable under
 23 Title 18 U.S.C.S. § 242 and Title 42 U.S.C.S. § 1983, and, Title II
 24 of the Americans with Disabilities Act of 1990, by officials acting
 25 under color of law and in their capacity as judges and clerks in
 26 the Superior Court of California (Santa Clara County), and police

1 officers and employees of the Sunnyvale Department of Public Safety,
2 Santa Clara Police Department, City of Campbell Police Department,
3 San Jose Police Department, and Santa Clara County Office of the
4 Sheriff.

5 11. Given the refusal and/or inability of local independent auditors,
6 e.g., Office of the Independent Police Auditor (San Jose), to properly
7 and effectively investigate the complaints and allegations of the
8 petitioner and bring the perpetrators to justice, in accordance with
9 the law and its own policies, and given further other substantial
10 indicators of governmental acquiescence in the abuses and its
11 unwillingness to support legal initiatives that might be undertaken
12 to obtain relief for the petitioner, efforts to secure remedies
13 through these venues is unavailable. Moreover, any efforts to obtain
14 relief from the Federal Bureau of Investigation will likely result
15 in further serious reprisals against the petitioner for making
16 allegations of wrongdoing on the part of local law enforcement
17 agencies. For these reasons, requirements for exhaustion of efforts
18 to obtain local relief should be considered waived and satisfied.

19 12. Consequently, Petitioner has no plain, speedy, and adequate remedy
20 in the ordinary course of the law other than to request the Court
21 to compel official action by mandatory order.

22 13. Petitioner asserts that a writ of mandamus is appropriate because
23 (1) he has sufficiently established his clear and indisputable right
24 to the relief sought, (2) the respondents have a statutory mandate
25 to fulfill that right, and (3) the petitioner has no other adequate
26 remedy.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Relief in nature of mandamus under Title 28 U.S.C.S. § 1361 was appropriate in action against federal officials alleging failure to discharge their duty, since plaintiffs sought only to require federal officers to perform ministerial duty of complying with their own regulations. [Legal Aid Soc'y v Brennan (1979, CA9 Cal) 608 F2d 1319, 21 BNA FEP Cas 605, 21 CCH EPD ¶ 30443, cert den (1980) 447 US 921, 656 L Ed 2d 1112, 100 S Ct 3010, 22 BNA FEP Cas 1832, 23 CCH EPD ¶ 30977]

B. District Court had jurisdiction under 28 USCS § 1361 of third-party action who sought to compel federal officials to fulfill their affirmative duty under federal statutes; to extent that third-party plaintiffs alleged that defendant federal officers acted unconstitutionally and outside ambit of their statutory authority, and sought relief to correct such actions, suit was "in the nature of mandamus" so as to bring it within purview of § 1361. [Kelley v Metropolitan County Board of Education (1973, MD Tenn) 372 F Supp

C. For petition to state claim upon which mandamus relief may be granted, it is imperative that petitioner allege that government owes petitioner performance of legal duty so plainly prescribed as to be free from doubt. [Pennsylvania by Sheppard v National Asso. of Flood Insurers (1975, CA3 Pa) 520 F2d 11, 20 FR Serv 2d 601]

D. When complaint is predicated upon Mandamus Act (28 USCS § 1361), it is essential that plaintiff allege and show that government owes him performance of legal duty "so plainly prescribed as to be free from

1 doubt." [Naporano Metal & Iron Co. v Secretary of Labor (1976, CA3
2 NJ) 529 F2d 537, 41 ALR Fed 597]

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner requests that the Court:

- 6 • Issue a writ of mandamus to compel the appropriate agents and/or
7 persons acting on behalf of the United States Attorney General,
8 Department of Justice, and Federal Bureau of Investigation, to
9 perform their duties pursuant to Title 28 U.S.C.S. § 1361(b), by May
10 15th, 2008; or, order the respondents to appear before this Court
11 and show cause why they have not done so;
- 12 • Order the respondents to provide a reasonably sufficient explanation
13 for refusing to uphold the provisions of the Title 18 U.S.C.S. §
14 1361(b), and for failing and/or refusing to perform their statutory
15 duty;
- 16 • Order respondents to provide a responsive answer to this petition
17 and that Plaintiff be afforded an evidentiary hearing prior to any
18 decision to dismiss or, in the alternative set forth herein, or,
19 summary judgment being granted in this matter; and,
- 20 • Order respondents to make known to petitioner and this Court, upon
21 receipt of petitioner's civil rights complaint, the determination
22 by the Civil Rights Division "as to whether the Department will
23 request a criminal civil rights investigation by the FBI or whether
24 the Division will decline criminal prosecution in favor of an
25 administrative inquiry" [United States Attorneys' Manual, Title 7,
26 Civil Rights Resource Manual, § 42 (prescribes the method in which

1 the FBI conducts investigations, and provides the criteria for
2 determining when an investigation by the FBI is required)].

3
4 Signed: 

Dated: 5-7-08

5
6 **VERIFICATION**

7 I, James Alan Bush, Petitioner in the above-entitled action, have
8 read the foregoing and know the contents thereof. The same is true of
9 my own knowledge, except as to those matters that are therein alleged
10 on information and belief; and, as to those matters, I believe it to be
11 true.

12 I declare under penalty of perjury that the foregoing is true and
13 correct and that this declaration was executed at San Jose, California.

14
15 Petitioner: 

Dated: 5-7-08

James Alan Bush
1745 De Marietta Avenue #3
San Jose, CA 95126
(408) 982-3272

Plaintiff in pro per

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Plaintiff hereby requests the Court take Judicial Notice pursuant to Rule 201, Federal Rules of Evidence, of Exhibit "A", Letter to James Alan Bush from the Department of Justice.

Signed:

Datadog

EXHIBIT A

Letter to James Alan Bush from
the Department of Justice



U.S. Department of Justice
Civil Rights Division

207-11-0/264004

*Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530*

February 23, 2007

James Alan Bush
1471 McDaniel Avenue
San Jose, CA 95126

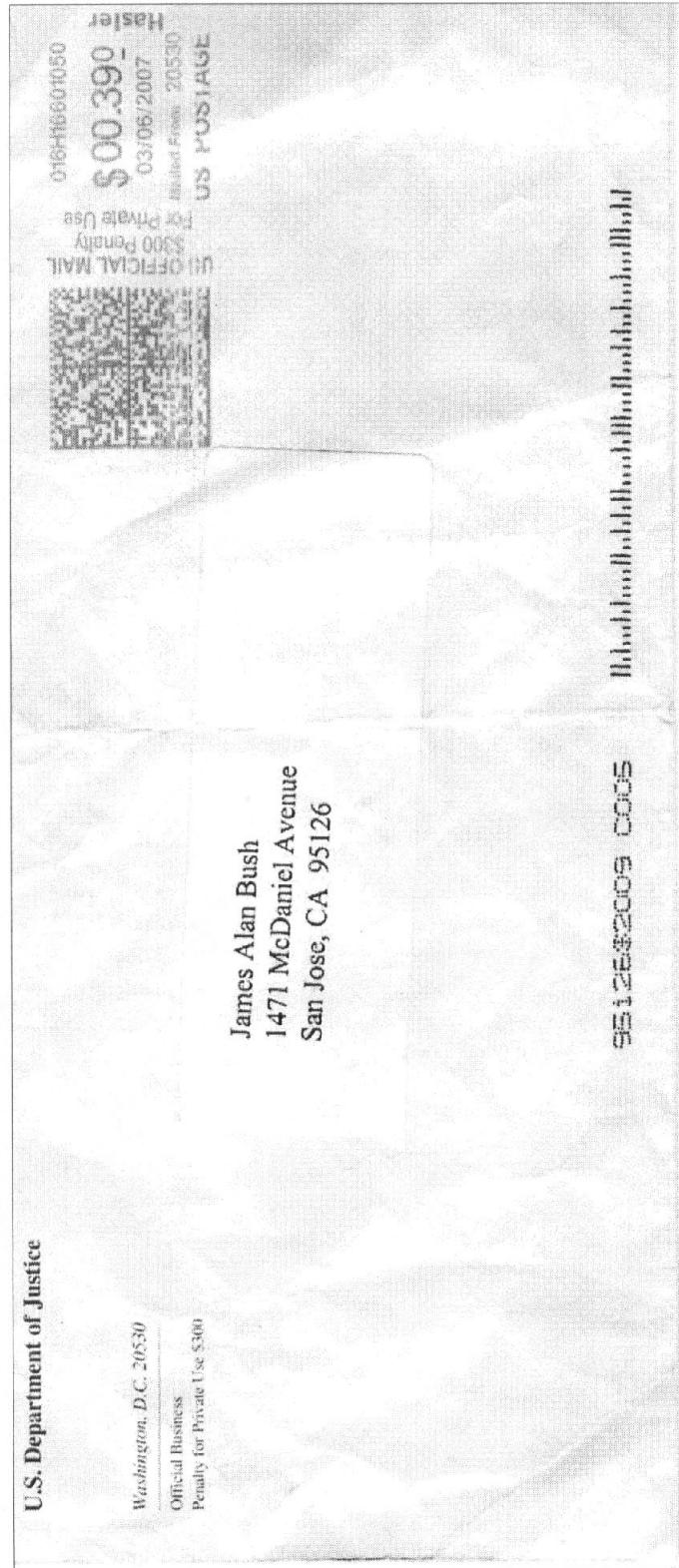
Dear Mr. Bush:

Thank you for your correspondence. The Special Litigation Section of the United States Department of Justice is responsible for enforcing the provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, that allows the Department to seek equitable relief to remedy a pattern or practice of misconduct by law enforcement agencies, such as police departments. When a systemic pattern or practice of misconduct is determined to exist, we have the authority to initiate civil action against the jurisdiction (city, county or state) in order to remedy the misconduct. The Department also has authority with regard to the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, which together prohibit discrimination on the basis of race, color, sex or national origin by police departments receiving federal funds.

The Section's authority does not extend to investigating the personal grievances of a single individual. The Section is not authorized to represent individual citizens in legal matters or to give legal advice. The Section also does not have the authority to seek criminal punishment or monetary damages for misconduct. Therefore, we are unable to provide you with legal opinions or assistance with personal lawsuits or legal matters. If you wish to pursue this matter further, you might consider contacting a private attorney or a legal services lawyer. This individual may assist you in determining what, if any, remedies may be available to you.

We will consider your letter carefully along with other information we may receive to determine whether a pattern or practice investigation is warranted. If you have additional details that you believe may be relevant to our review, we would appreciate it if you would forward that information to us.

We hope that this information is helpful to you. For additional information, you may want to review our website:



1 James Alan Bush
2 1745 De Marietta Avenue #3
3 San Jose, CA 95126
4 (408) 982-3272

5 Plaintiff in pro per
6
7

FILED

2008 MAY -5 2 9:13

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. (S.J.)

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

~~✓
Sem~~

11 *OK*

12 James Alan Bush,) Case No.: C 08-00539 (RS) JF
13)
14 Plaintiff,) PETITION FOR WRIT OF MANDAMUS
15 v.) TO COMPEL THE FEDERAL BUREAU OF
16 United States Attorney General,) INVESTIGATION TO PERFORM THEIR
17 Department of Justice, Federal) DUTY UNDER TITLE 28 U.S.C.S. § 1361
18 Bureau of Investigation, and)
19 DOE AGENT ONE to DOE AGENT TEN,)
inclusive,)
Defendants.) Judge Jeremy Fogel
20)
21
22 PRELIMINARY STATEMENT
23
24 Comes now the Petitioner, James Alan Bush, on information, belief
25 and established facts, by and through his own counsel of record, in
26 pro se, and for his causes of action against all named and unnamed
Defendants, states the following:

1 Plaintiff is seeking ~~to~~ mandamus relief to which he is entitled
2 under Title 28 U.S.C.S. § 1361 against federal agencies who have failed
3 to exercise, or have abused, their discretion, failed to fulfill their
4 statutory responsibilities, or failed to take actions within the legal
5 limits of their authority.

6

7 **RELEVANT STATUTORY SCHEME**

8 Title 28 U.S.C.S. § 535(b) authorizes the Attorney General and
9 the Federal Bureau of Investigation to investigate any information,
10 allegation, matter, or complaint witnessed, discovered, or received,
11 relating to violations of federal criminal law involving government
12 officers and employees; and, requires the head of the agency, or the
13 witness, discoverer, or recipient, to expeditiously report these
14 violations to the Attorney General, as appropriate.

15

16 **JURISDICTION**

17 Title 28 U.S.C.S. § 1361 confers jurisdiction on the district courts
18 to compel an officer of the United States to perform his duty. The
19 district courts shall have original jurisdiction of any action in the
20 nature of mandamus to compel an officer or employee of the United States
21 or any agency thereof to perform a duty owed to plaintiff.

22

23 **VENUE**

24 Title 28 U.S.C.S. § 1391(e) provides for venue for actions in the
25 nature of mandamus brought under Title 28 U.S.C.S. § 1361 against
26 federal officers, employees, or agencies, or any agency thereof acting in

its official capacity or under color of legal authority.

PARTIES

1. Petitioner, James Alan Bush, is the plaintiff in an action filed in the United States District Court, District of Northern California, San Jose Division, Case No. C 08-01354 (RS) JF, on March 10th, 2008, which sets the foundation to support the claims as set forth herein, and provides the factual basis for the violations the petitioner attempted to report to the respondents.
 2. Respondent, Attorney General of the United States, is the head of the United States Department of Justice.
 3. Respondent, Department of Justice: Civil Rights Division, is an executive department of the United States at the seat of the United States Government.
 4. Respondent, Federal Bureau of Investigation, is an agency of the United States and component of the Attorney General of the United States and the Department of Justice.
 5. Respondents, DOE AGENT ONE to DOE AGENT TEN, acting within the scope of their office or employment as officers, agents and/or employees of Defendant FBI, individually and each in their official capacity, arising from the negligent and/or wrongful acts and/or omissions occurring in connection with the performance of their duties.

FACTUAL SUMMARY

6. As agents acting on behalf of the United States Attorney General, the Department of Justice, and the Federal Bureau of Investigation,

1 Respondents, DOE AGENT ONE to DOE AGENT TEN, have, and at all
2 relevant times described herein had, a clear and present legal duty
3 (i.e., nondiscretionary ministerial and statutory requirement) under
4 Title 28 U.S.C.S. § 1361 to report any information, allegation, and
5 complaint relating to violations of federal criminal law involving
6 Government officers and employees to the United States Attorney
7 General.

8 7. Respondent has, and at all relevant times described herein had, the
9 present ability to perform the above-described duty.

10 8. Respondents, Department of Justice and Federal Bureau of
11 Investigation are, and at all relevant times described herein were,
12 the appropriate venue to bring petitioner's complaint, in that:

- 13 • Title 42 U.S.C.S. § 12101 grants authority to the Civil Rights
14 Division of the Department of Justice to enforce the Fourteenth
15 Amendment and investigate allegations of discrimination under Title
16 II of the Americans with Disabilities Act (ADA) of 1990;
- 17 • Title 42 U.S.C.S. § 14141 creates a cause of action to allow the
18 United States to remedy a pattern or practice of conduct by any
19 governmental authority, or any agent thereof, or any person acting
20 on behalf of a governmental authority, including "law enforcement
21 officers...that deprives persons of [federal] rights...";
- 22 • Title 28 Part II Chapter 33 § 535 mandates and governs the
23 investigation of crimes involving government officers and employees;
- 24 • A state law enforcement agency may be enjoined from committing
25 constitutional violations where there is proof that officers within
26 the agency have engaged in a persistent pattern of misconduct

1 [Thomas v. County of Los Angeles, 978 F.2d 504, 508-509 (9th Cir.
2 1993)]; and,

3 • The Supreme Court has repeatedly upheld the appropriateness of
4 federal injunctive relief to combat a 'pattern' of illicit law
5 enforcement behavior [Pennsylvania v. Porter, 659 F.2d 306 (3rd Cir.
6 1981)].

7 9. On multiple occasions between June 2006 and January 2008, petitioner
8 made prior demands on the aforementioned respondents to perform
9 their duty, which were made in writing and in persona, to the FBI
10 Field Divisions in San Francisco (at 450 Golden Gate Avenue, 13th
11 Floor) and Campbell (1919 South Bascom Avenue, 4th Floor), ~~by either~~
12 ~~calling or visiting in-person;~~ and, on January 10th, 2008, petitioner
13 sent a letter to the Civil Rights Division of the Department of
14 Justice, which provided an overview of his complaint. On March 6th,
15 2007, the Department of Justice replied by letter, claiming that the
16 Special Litigation Division was the improper venue to submit his
17 complaint. A copy of the letter is attached hereto as Exhibit "A"
18 and made a part hereof.

19 10. Respondents refused to hear petitioner's allegations of deprivation
20 of certain rights and protections guaranteed to him by the Fourth
21 and Fourteenth Amendments of the United States Constitution
22 and the laws of the United States, which is cognizable under
23 Title 18 U.S.C.S. § 242 and Title 42 U.S.C.S. § 1983, and, Title II
24 of the Americans with Disabilities Act of 1990, by officials acting
25 under color of law and in their capacity as judges and clerks in
26 the Superior Court of California (Santa Clara County), and police

1 officers and employees of the Sunnyvale Department of Public Safety,
2 Santa Clara Police Department, City of Campbell Police Department,
3 San Jose Police Department, and Santa Clara County Office of the
4 Sheriff.

5 11. Given the refusal and/or inability of local independent auditors,
6 e.g., Office of the Independent Police Auditor (San Jose), to properly
7 and effectively investigate the complaints and allegations of the
8 petitioner and bring the perpetrators to justice, in accordance with
9 the law and its own policies, and given further other substantial
10 indicators of governmental acquiescence in the abuses and its
11 unwillingness to support legal initiatives that might be undertaken
12 to obtain relief for the petitioner, efforts to secure remedies
13 through these venues is unavailable. Moreover, any efforts to obtain
14 relief from the Federal Bureau of Investigation will likely result
15 in further serious reprisals against the petitioner for making
16 allegations of wrongdoing on the part of local law enforcement
17 agencies. For these reasons, requirements for exhaustion of efforts
18 to obtain local relief should be considered waived and satisfied.

19 12. Consequently, Petitioner has no plain, speedy, and adequate remedy
20 in the ordinary course of the law other than to request the Court
21 to compel official action by mandatory order.

22 13. Petitioner asserts that a writ of mandamus is appropriate because
23 (1) he has sufficiently established his clear and indisputable right
24 to the relief sought, (2) the respondents have a statutory mandate
25 to fulfill that right, and (3) the petitioner has no other adequate
26 remedy.

MEMORANDUM OF POINTS AND AUTHORITIES

- A. Relief in nature of mandamus under Title 28 U.S.C.S. § 1361 was appropriate in action against federal officials alleging failure to discharge their duty, since plaintiffs sought only to require federal officers to perform ministerial duty of complying with their own regulations. [Legal Aid Soc'y v Brennan (1979, CA9 Cal) 608 F2d 1319, 21 BNA FEP Cas 605, 21 CCH EPD ¶ 30443, cert den (1980) 447 US 921, 656 L Ed 2d 1112, 100 S Ct 3010, 22 BNA FEP Cas 1832, 23 CCH EPD ¶ 30977]
 - B. District Court had jurisdiction under 28 USCS § 1361 of third-party action who sought to compel federal officials to fulfill their affirmative duty under federal statutes; to extent that third-party plaintiffs alleged that defendant federal officers acted unconstitutionally and outside ambit of their statutory authority, and sought relief to correct such actions, suit was "in the nature of mandamus" so as to bring it within purview of § 1361. [Kelley v Metropolitan County Board of Education (1973, MD Tenn) 372 F Supp 528]
 - C. For petition to state claim upon which mandamus relief may be granted, it is imperative that petitioner allege that government owes petitioner performance of legal duty so plainly prescribed as to be free from doubt. [Pennsylvania by Sheppard v National Asso. of Flood Insurers (1975, CA3 Pa) 520 F2d 11, 20 FR Serv 2d 601]
 - D. When complaint is predicated upon Mandamus Act (28 USCS § 1361), it is essential that plaintiff allege and show that government owes him performance of legal duty "so plainly prescribed as to be free from

1 doubt." [Naporano Metal & Iron Co. v Secretary of Labor (1976, CA3
2 NJ) 529 F2d 537, 41 ALR Fed 597]

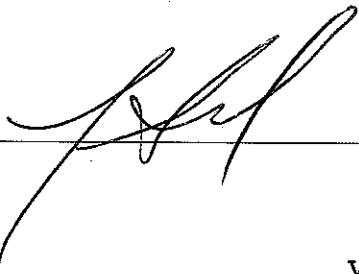
3

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner requests that the Court:

- 6 • Issue a writ of mandamus to compel the appropriate agents and/or
7 persons acting on behalf of the United States Attorney General,
8 Department of Justice, and Federal Bureau of Investigation, to
9 perform their duties pursuant to Title 28 U.S.C.S. § 1361(b), by May
10 15th, 2008; or, order the respondents to appear before this Court
11 and show cause why they have not done so;
- 12 • Order the respondents to provide a reasonably sufficient explanation
13 for refusing to uphold the provisions of the Title 18 U.S.C.S. §
14 1361(b), and for failing and/or refusing to perform their statutory
15 duty;
- 16 • Order respondents to provide a responsive answer to this petition
17 and that Plaintiff be afforded an evidentiary hearing prior to any
18 decision to dismiss or, in the alternative set forth herein, or,
19 summary judgment being granted in this matter; and,
- 20 • Order respondents to make known to petitioner and this Court, upon
21 receipt of petitioner's civil rights complaint, the determination
22 by the Civil Rights Division "as to whether the Department will
23 request a criminal civil rights investigation by the FBI or whether
24 the Division will decline criminal prosecution in favor of an
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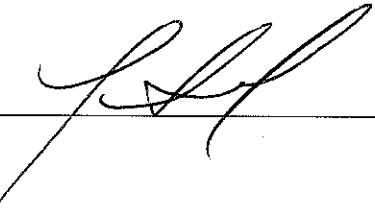
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5 Dated: 5-7-08

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8 read the foregoing and know the contents thereof. The same is true of
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12 I declare under penalty of perjury that the foregoing is true and
13 correct and that this declaration was executed at San Jose, California.

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15 Petitioner: 

16 Dated: 5-7-08

James Alan Bush
1745 De Marietta Avenue #3
San Jose, CA 95126
(408) 982-3272

Plaintiff in pro per

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

James Alan Bush,) Case No.: C 08-00539 (RS) JF
)
Plaintiff,) REQUEST FOR JUDICIAL NOTICE IN
) SUPPORT OF PLAINTIFF'S PETITION FOR
) WRIT OF MANDAMUS TO COMPEL THE
) FEDERAL BUREAU OF INVESTIGATION TO
) PERFORM THEIR DUTY UNDER TITLE 28
v.) U.S.C.S. § 1361
United States Attorney General,)
Department of Justice, Federal)
Bureau of Investigation, and)
DOE AGENT ONE to DOE AGENT TEN,)
inclusive,)
)
Defendants.) Judge Jeremy Fogel

Plaintiff hereby requests the Court take Judicial Notice pursuant to Rule 201, Federal Rules of Evidence, of Exhibit "A", Letter to James Alan Bush from the Department of Justice.

Signed:

Dated:

EXHIBIT A

Letter to James Alan Bush from
the Department of Justice



U.S. Department of Justice
Civil Rights Division

207-11-0/264004

Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530

February 23, 2007

James Alan Bush
1471 McDaniel Avenue
San Jose, CA 95126

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